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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,	) No. CR 10-455 WHA
14 Plaintiff,	) UNITED STATES' UNOPPOSED MOTION FOR
15 v.	) ORDER AUTHORIZING PREPARATION OF
16 MARCEL DARON KING,	) TRANSCRIPT; PROPOSED ORDER
17 Defendant.	) Hearing Date: August 22, 2017
	) Hearing Time: 2:00 p.m.
	) Judge: Hon. William Alsup

18
19 TO: DEFENDANT MARCEL DARON KING

20 PLEASE TAKE NOTICE that on August 22, 2017, at 2:00 p.m., before the Honorable William
21 Alsup, the United States will move this Court for an order authorizing the court reporter to prepare the
22 transcript from the in camera proceedings conducted on September 13, 2016, in the captioned case. This
23 motion is based upon the attached memorandum of points and authorities, and the supporting declaration
24 of Philip Kopczynski. Unless the Court wishes to hear argument, the government asks the Court to
25 decide this unopposed motion on the papers.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 The government asks the Court to authorize the court reporter to prepare the transcript from the
28 in camera proceedings conducted in this matter on September 13, 2016. There is no rule or test, to the

1 government's knowledge, that governs this request; instead, it is simply a matter left to the Court's
2 discretion. *See United States v. Schlette*, 842 F.2d 1574, 1577 (9th Cir.), *amended*, 854 F.2d 359 (9th
3 Cir. 1988). The government asks the Court to exercise its discretion in favor of release here because the
4 transcript is relevant to the defendant's appeal.

5 On September 13, 2016, the Court questioned T.G., the minor victim in the then-pending
6 supervised release matter, about whether she was able to testify in the defendant's presence. The Court
7 decided to question T.G. in chambers at the government's suggestion and without objection from the
8 defense. Tr. 9/13/16 at 8:11-19. The individuals present in chambers included the victim, her guardian,
9 Your Honor, one of Your Honor's clerks, the lawyers, the probation officer, and the court reporter. *Id.*
10 at 30:4-12. Upon returning to the courtroom, the Court remarked, "All right. . . . We're going to start
11 [with T.G.'s testimony] in the normal way with the defendant present. But if the witness becomes
12 uncomfortable, she's going to ask that the witness^[1] be excluded, and I – or if I feel that in some way
13 she's reached that point, I may myself make that conclusion. But she's willing to give it a try, so we
14 will see how that goes." *Id.* at 31:5-12.

15 When the government's direct examination of T.G. reached the topic of the sexual assault, T.G.
16 asked, "Can we do the second alternative?" *Id.* at 59:10. The "second alternative" referred to T.G.
17 testifying with the defendant not present. The Court decided to permit T.G. to testify with the defendant
18 participating by video and telephone from another courtroom. *See id.* at 67-68. She testified with that
19 arrangement, and after further proceedings, the Court found that the defendant was guilty of the charged
20 violation of his supervised release. Dkt. 281.

21 On appeal, the defendant claims the Court erred by excluding him from the courtroom during
22 parts of T.G.'s testimony. He argues that the Court failed to make the factual findings required by 18
23 U.S.C. § 3509, and that his exclusion violated his constitutional rights. *See Appellant's Opening Br.*
24 (Dkt. 9) 23-37, *United States v. King*, No. 17-10006 (9th Cir.). The government has not yet filed its
25 answering brief.

26
27
28 ¹ The Court said "witness," according to the transcript, but either this is a transcription error or
the Court misspoke. From context, it is apparent that "witness" should be "the defendant."

1 The Court's questioning of T.G. in camera is relevant to the defendant's claim on appeal. The
2 Court's questions, and T.G.'s answers, may help show the basis for the temporary exclusion of the
3 defendant from the courtroom. The government is ordering the transcript, but the court reporter requires
4 an order from this Court allowing her to prepare the transcript. *See* Declaration of Philip Kopczynski in
5 Support of Motion for Miscellaneous Relief ("Kopczynski Decl.") ¶ 3. The government respectfully
6 asks the Court to issue such an order. The transcript should be sealed, *see* 18 U.S.C. § 3509(d)(2), but
7 released to the parties. If the government uses the transcript in its response to the defendant's appeal, it
8 will redact identifying information of T.G. The defendant does not oppose this motion. Kopczynski
9 Decl. ¶ 4.

10 DATED: August 2, 2017

Respectfully submitted,

11 BRIAN J. STRETCH
12 United States Attorney

13 /s/ Philip Kopczynski
14 PHILIP KOPCZYNSKI
15 Assistant United States Attorney
16

17 ~~**[PROPOSED] ORDER**~~

18 The government's motion is GRANTED. The court reporter is authorized to prepare the
19 transcript from the in camera proceedings conducted in this matter on September 13, 2016. The
20 transcript shall be filed under seal but released to the parties.

21 IT IS SO ORDERED.

22 DATED: August 3, 2017.



23 HON. WILLIAM ALSUP
24 United States District Judge
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,	)	No. CR 10-455 WHA
)	
14 Plaintiff,	)	DECLARATION OF PHILIP KOPCZYNSKI
	)	IN SUPPORT OF MOTION FOR
15 v.	)	MISCELLANEOUS RELIEF
)	
16 MARCEL DARON KING,)	
)	
17 Defendant.)	

18 I, Philip Kopczynski, being duly sworn, state:

- 19 1. I am an Assistant United States Attorney in the Northern District of California.
- 20 2. I am counsel of record for the United States of America in the above-captioned case.
- 21 3. The court reporter who reported the in camera proceedings conducted on September 13,
- 22 2016, informed one of my colleagues in the U.S. Attorney's Office today that she requires a court order
- 23 authorizing her to prepare the transcript of those proceedings.
- 24 4. Counsel for the defendant informed me that he does not oppose this motion.

25 I declare under penalty of perjury that the foregoing is true and correct to the best of my

26 information and belief.

27 Executed on August 2, 2017, in San Francisco, CA.

/s/ Philip Kopczynski
PHILIP KOPCZYNSKI